



Wayne County reserve cop did jail time, has sex offender history

Nearly a decade later, a judge overturned his conviction in a seven-minute hearing. The man resigned after Free Press inquiries.

Gina Kaufman and Jim Schaefer, Detroit Free Press

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A high-profile leader of the Wayne County Sheriff's reserve unit had a secret past: He once served jail time for sexual assault and for years had been listed on Michigan's sex offender registry, a Free Press investigation has found.

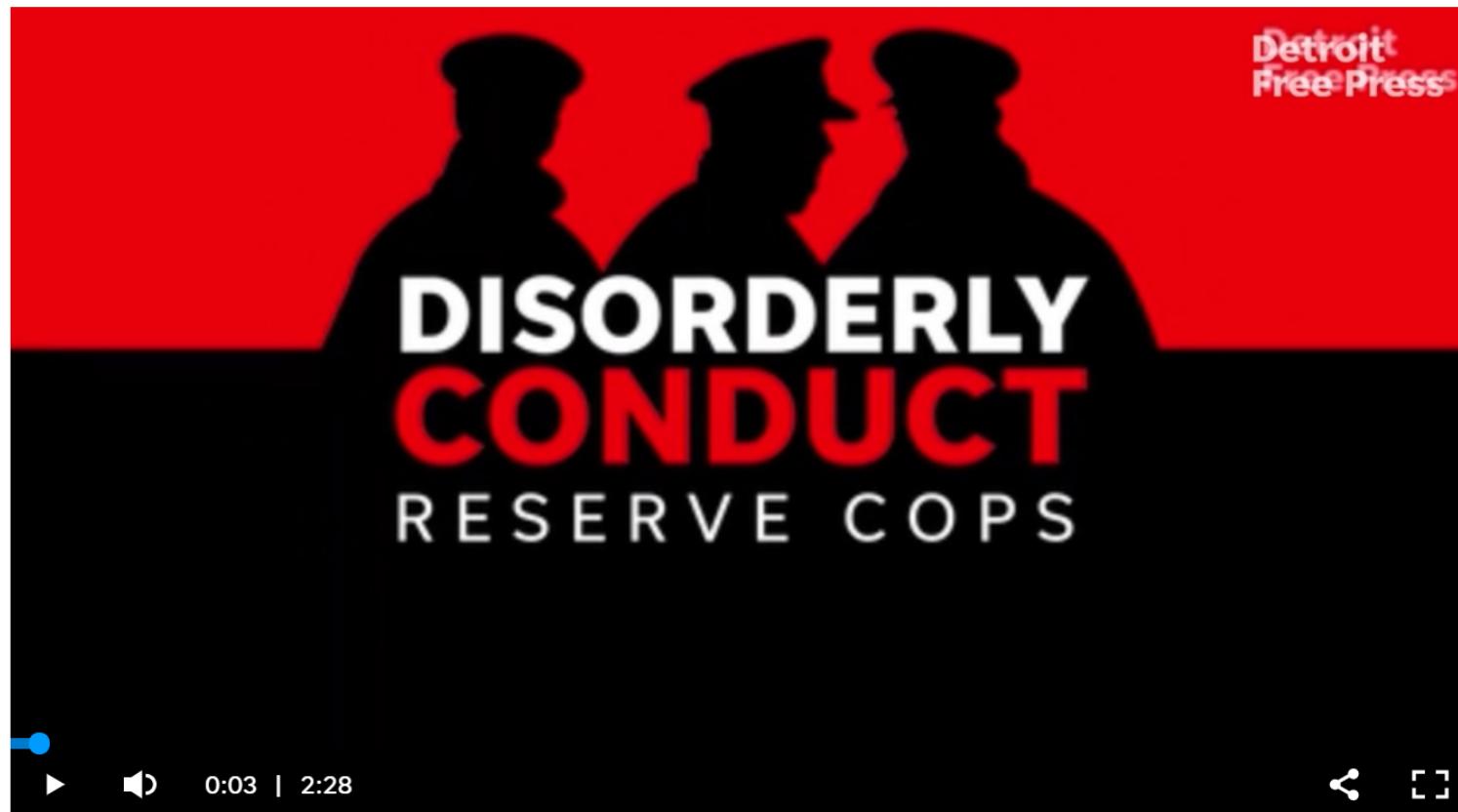
As a deputy chief of a civilian volunteer force, Mark Zarkin carried a gun, wore a badge and donned a police uniform. Zarkin resigned Feb. 4, hours after being interviewed as part of the newspaper's investigation. Zarkin's position highlights the stunning lack of oversight of police reserves in Michigan and across the

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Reserve cop resigns after Free Press inquiries

Last fall, the Free Press documented how Michigan lags behind other states in its regulation of reserve officers. Despite gaining the authority more than two years ago to mandate training and background checks, the Michigan Commission on Law Enforcement Standards has set no such standards.

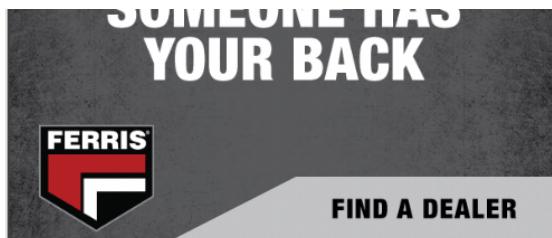
During the newspaper's investigation, and in the months since publication, the Wayne County Sheriff's Office has repeatedly refused to release its roster of reserve officers, shielding the identities of more than 300 civilians who carry handguns and help with policing.

Zarkin, a 52-year-old Oakland County resident, was an administrator over that reserve force. He had a take-home car emblazoned with "SHERIFF" in giant letters along its sides and recently oversaw reserves working at the North American International Auto Show in downtown Detroit. In December, he

For about nine years, ending well before he was a reserve officer, Zarkin was on Michigan's sex offender registry, court records show.

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Today, however, there is no conviction on his record.

■ **'I know that he had an issue ...'**

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Benny Napoleon. This, despite the records being readily available online and at the clerk's office in the Macomb County Circuit Court.

When reporters asked Napoleon whether he knew Zarkin once had a felony conviction, the sheriff said: "I know that he had an issue in court but there was never any prosecution of it."

Not true.

Zarkin was convicted in a plea deal of a felony offense in 2000. Nearly a decade later, Zarkin sought to withdraw his plea, claiming he had not been told he had to be on the registry for so long. A circuit judge overturned his conviction. At a quick hearing before the judge made that decision, a prosecutor mounted no argument and that same day agreed to not pursue a new trial — a decision officials at the Macomb County Prosecutor's Office today say was unusual.

to endure and befuddled as to how this 1997 case, that resulted in a conviction, could have been overturned by the court nearly 10 years later.

Macomb County Prosecutor Eric Smith

Prosecutor Eric Smith, who held the office when the case was overturned, would not grant an interview, but sent an email saying his office is reviewing the situation and other cases that have involved such motions by defendants. Smith said the overturning of a conviction like Zarkin's is rare.





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Macomb County Prosecutor Eric Smith

JEFFREY M. SMITH, PORT HURON TIMES HERALD

"I am truly sorry for what this victim had to endure and befuddled as to how this 1997 case, that resulted in a conviction, could have been overturned by the court nearly 10 years later," Smith said.

“

I go above and beyond and I do it all for no charge to the county. I would do it for anyone. I see an elderly person with a shopping cart and I'm trying to help them unload their groceries. I won't walk down the street without helping someone. It's what I do.

Mark Zarkin

Farmington Hills, said he has had no other criminal history, and his previous conviction shouldn't matter when it comes to his reserve officer post. In an interview, he declined to discuss the sexual assault case, but he touted his record of helping people as a reserve leader.

"I go above and beyond and I do it all for no charge to the county," he said before his resignation. "I would do it for anyone. I see an elderly person with a shopping cart and I'm trying to help them unload their groceries. I won't walk down the street without helping someone. It's what I do."

His attorney, who attended the interview along with a public relations executive, emphasized that Zarkin no longer has a criminal record.

INVESTIGATION: They look like cops, but they're not. And they're all over Michigan

MORE: How problem cops stay on Michigan's streets

Napoleon in an interview said that Zarkin had been a good leader for his reserve division. The sheriff said he was aware there had been some trouble in Zarkin's past but didn't know about the former conviction or sex offender registration. He had to have passed background checks for his concealed pistol license and the liquor

license for his restaurant, Napoleon said.

Napoleon was unsure whether Zarkin had disclosed on his application that he had been arrested for a sex offense and said that the documentation couldn't be located. The current application form online asks whether an applicant has ever been arrested.

Even if the disclosure were made, the sheriff said, "a lot of people get arrested, but they don't get convicted, so we don't go on arrests. Even for sworn officers, an arrest does not disqualify you."

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reserves, of which there are more than 3,000 supplementing the ranks of departments in Michigan, according to a previous Free Press analysis of records compiled from statewide Freedom of Information Act requests.

Told that Zarkin's conviction was vacated in 2009, Napoleon replied: "OK, which means that he has no conviction."

Napoleon's office is one of only a handful of police agencies out of more than 550 across the state that previously denied Free Press open records requests for rosters of volunteer civilian officers. The newspaper sought the information in its accounting of how many civilian officers there are doing police work across Michigan — a tally believed to be the first of its kind.

A lot of people get arrested, but they don't

Wayne County Sheriff Benny Napoleon

Many agencies, including other large counties and cities, supplied names and their number of reserve officers to the Free Press. Some agencies said they had none.

Many reserve officers provide much-needed help to communities, working in areas like traffic control and security at festivals. Many wear full uniforms and look just like the regular police. Cash-strapped places in particular say reserves are vital to supplement police forces. Unlike regular cops, though, some reserves receive much less training. It's left up to individual departments to set standards.

The Free Press found numerous examples of reserve officers with troubling issues, including a man with white supremacist ties who volunteered with two agencies in western Michigan, a felon who



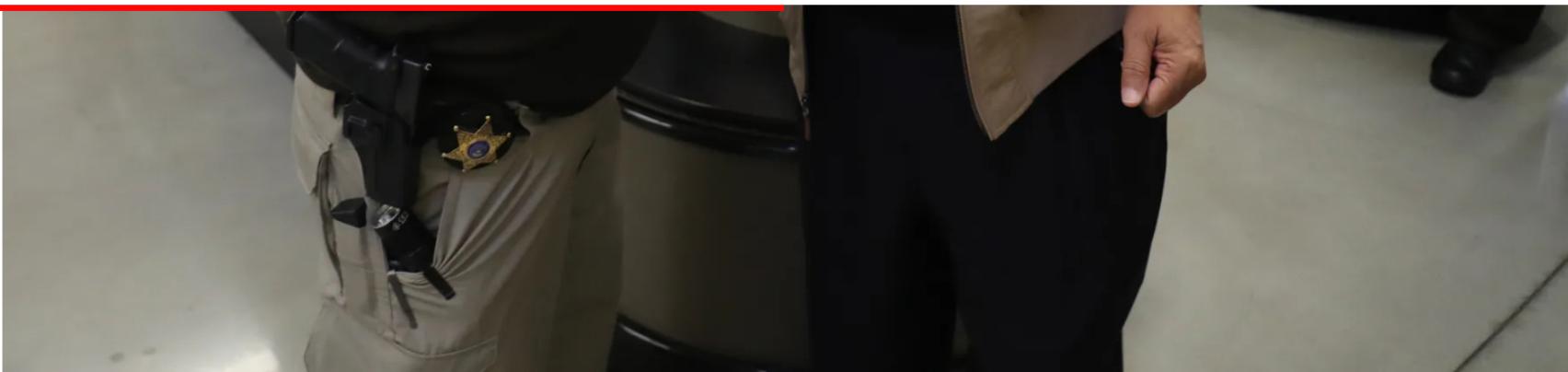


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Wayne County Sheriff reserve officer Mark Zarkin with Sheriff Benny Napoleon during a Shop with a Cop event on Saturday, Dec. 15, 2018, at a Meijer store in Detroit.

KIRTHMON F. DOZIER, DETROIT FREE PRESS

In January, during the interview about Zarkin, the Free Press again requested that Napoleon release the names of his police reserves.

"Absolutely not," he replied. "Our reserves work in conjunction with our street people, they assist us in backup with narcotics arrests.

A spokeswoman for the sheriff's office confirmed there are 101 uniformed reserve officers and 231 reserves who are part of the Community Emergency Response Team. Napoleon said the uniformed reserves assist with serious police work. CERT members wear a different uniform and have more restricted duties.

Zarkin said he primarily managed the CERT reserves. He said he has been through firearms training.

After hearing about Zarkin's background from reporters, Napoleon said he would work with his leadership team to examine the process of vetting reserve officers and would discuss the matter with Zarkin, who ended up resigning.

Regarding Zarkin's conviction being wiped clean, given the seriousness of the original allegation, Napoleon, a lawyer, said, "This is the strangest thing that I've ever heard of, to be honest, in 43 years of law enforcement. I've never heard of anything

■ How it happened

Zarkin was accused in a 1996 sexual assault at a motel in Fraser of an incapacitated 20-year-old woman who prosecutors said had been plied with alcohol. Blood tests also detected Valium in her system, court records show.

Another man had arranged for the woman to dance in a private setting in exchange for money, but she ended up alone with Zarkin

sexting in exchange for money, but she ended up alone with Zarkin.

They spent the night drinking at a restaurant in Auburn Hills.

Zarkin, who was 29 then, took the woman to a room at the Flamingo Motel in Fraser, and put her in the bath because she had vomited.

He would later tell police he was worried she might drown, given her condition.

He told police he then laid her on the bed and left and the two did not have sex, but DNA evidence from the rape kit later proved

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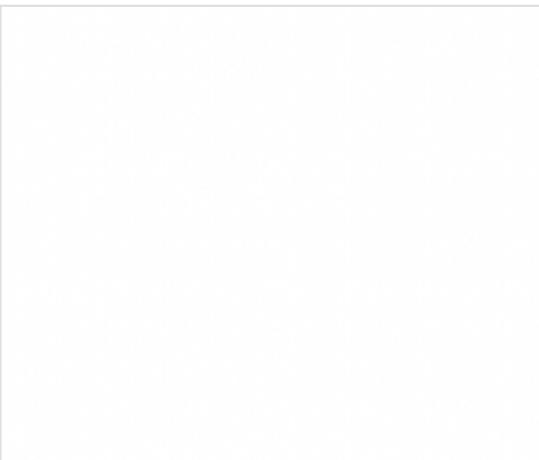
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that carries a penalty of up to 15 years in prison.

The case dragged on and didn't end up in trial until January 2000.

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The assistant prosecutor at trial said during his opening statement that employees of the restaurant would testify that the victim couldn't stand on her own and had to be carried.

Zarkin decided to accept a plea deal in the middle of his trial. He pleaded no contest to attempted third-degree criminal sexual conduct, a felony punishable by up to five years in prison. The original charge was dismissed.

Zarkin was sentenced to three years of probation, with the first eight months to be served in the Macomb County Jail. He also was ordered to be on the sex offender registry for 25 years.

Then-Macomb Circuit Judge Deborah Servitto told Zarkin at the time that he was getting “a substantial break,” according to a transcript of the sentencing.

Supporters wrote letters on Zarkin’s behalf, saying he was not a sexual predator and asking for leniency.

One attorney wrote in to say Zarkin was a “man that loves his children, is well known in the community, is basically a good man.”
A former district court probation director said Zarkin, her friend.

ordinary course of life in a million years.”

When the victim spoke at the sentencing, she said she had listened to Zarkin’s friends and family talk about how he is a good person.

“If he was a good person, he wouldn’t have done this,” she said.

She said she wasn’t proud of what she had done in her past and that, mentally, the incident had ruined her life. She said Zarkin should not be allowed to go free.

I don't believe that you're an evil person, but what you did was a criminal and evil act. I talked to the jury afterwards, they were going to convict you of a 15-year felony. I believed the victim when she testified. ... I had a chance to evaluate the

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Then-Circuit Judge Deborah Servitto

Reached by the Free Press recently, the woman — who the Free Press is not identifying because she was the victim of a sex crime — declined to comment, saying she has concerns for her safety.

Judge Servitto told Zarkin at sentencing: "I don't believe that you're an evil person, but what you did was a criminal and evil act. I talked to the jury afterwards, they were going to convict you of a 15-year felony. I believed the victim when she testified. ... I had a chance to evaluate the victim's credibility and I found her to be a credible witness."

Zarkin went to jail and had to register as a sex offender. In 2009, he filed his motion asking another judge to allow him to withdraw his plea.

According to the motion, Zarkin would never have agreed to the

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Transcripts show Judge Servitto had told Zarkin at his plea hearing that he had registration requirements, and later at his sentencing, the judge spelled it out: "You have the obligation for the next 25 years to register as a sex offender."

Still, he prevailed with his motion. Macomb Circuit Judge Mark Switalski held a hearing just one week after the filing and overturned Zarkin's conviction.

The prosecutor assigned to the courtroom that day, John Paul Hunt, did not object, according to a transcript of the hearing.

The transcript shows that court proceeding was seven minutes long. The victim was not in attendance. Hunt told the judge during the hearing that the prosecutor's office had not been able to reach her.

Hunt, who did not handle the trial, told the Free Press he doesn't

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believe it's an "ordinary occurrence" for a sex offense to be vacated. Other criminal justice experts agree.

Nancy Diehl, a retired Wayne County prosecutor who was chief of the trial division and specialized in child abuse and domestic violence cases, questioned why the Zarkin hearing was not handled by the prosecutor's appellate lawyers, rather than an assistant assigned to a courtroom for the day.

“There should have been a response by the prosecution,” Diehl said in an interview. “Something doesn’t seem right but it’s so hard not knowing more.”

Richard Krisciunas, a University of Detroit Mercy law professor and also a former chief of the Wayne County Prosecutor’s Office trial division, said for the prosecution to just dismiss the case without any objections to the defendant’s claim, “that’s odd, that’s unusual.”

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■ One week to overturn conviction

Judge Switalski, who is the brother of the prosecutor who tried Zarkin in 2000, said recently he doesn’t recall granting Zarkin’s motion to have the conviction overturned.

“The transcript speaks for itself,” he said.

In the transcript from that hearing in 2009, Switalski noted in court that he had received a number of character letters in support of Zarkin. As to the authors, he said in court, “they’re outstanding as a group ... probably as good as I have ever seen.”

The letters are not included in the court file today.

In a recent interview, Switalski said he no longer has those letters, but “clearly it made an impact on me.”

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attorneys, judges, law enforcement officials, elected officials, local celebrities and businessmen. Some photos are from his restaurant, and he often captions his posts with "Mark Zarkin at your service." Other photos with movers and shakers are when he was working in his deputy uniform at events for Wayne County.

In one photo that had been posted to Facebook, Zarkin has his arm around Napoleon. The caption reads: "Always enjoyable spending time with my friend Sheriff Benny Napoleon the real king of Wayne County."

Napoleon agreed that the two were friends, but said they don't hang out socially.

Napoleon said Zarkin was a reserve for several years, but the sheriff wasn't sure of Zarkin's start date. Zarkin had a take-home car, and said he purchased it then donated it for the county's use. He also had it painted, and outfitted with the sheriff's insignia. Zarkin and Napoleon said Zarkin footed the bill for fuel and maintenance. He

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■ **'He got a sweet deal'**

Retired Fraser Police Lt. Jim Colby, who was the lead investigator on the sexual assault case, said he did not know, until informed by Free Press reporters, that Zarkin's conviction had been vacated. He called the dismissal a miscarriage of justice.

"It's not like the victim came forward at a later time and withdrew

her accusations, OK, and he was wrongfully convicted," Colby said. "He wasn't wrongfully convicted." He said Zarkin avoided a possible lengthy prison term with his plea.

"He got a sweet deal."

Colby was dismayed to hear Zarkin was working as a reserve officer in Wayne County, but not surprised. He remembered that Zarkin associated with people in the law enforcement community

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their background checks on their reserves," Colby said. "It obviously couldn't have been very thorough."

“

It's not like the victim came forward at a later time and withdrew her accusations, OK, and he was wrongfully convicted. He wasn't wrongfully convicted. ... He got a sweet deal.

Jim Colby, the retired officer who was in charge of the investigation

Last week, Zarkin turned in his badge and car, and said he was stepping down at Napoleon's request. He said he didn't want to tarnish the reserve program.

He informed reporters of this development in a late-night phone

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